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NORRIS, MCLAUGHLIN & MARCUS, PA  
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NEW YORK, NY 10022

EXAMINER
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SRIVASTAVA, KAILASH C

ART UNIT	PAPER NUMBER
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1657

MAIL DATE	DELIVERY MODE
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09/28/2007

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

## Office Action Summary

Application No.

10/623,241

Applicant(s)

HORN, JURGEN

Examiner

Dr. Kailash C. Srivastava

Art Unit

1657

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 23 July 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-9, 12 and 15-27 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) 1-9, 12 and 15-23 is/are allowed.
- 6) ☐ Claim(s) 24, 26 and 27 is/are rejected.
- 7) ☐ Claim(s) 25 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- ☐ Notice of Informal Patent Application
- ☐ Other: \_\_\_\_\_

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## DETAILED ACTION

1. Response and amendment filed 23 July 2007 in response to Office Action mailed 23 March 2007 are acknowledged and entered.
2. In view of amendments and remarks filed 23 July 2007, following objection and rejection in the Office Action 23 March 2007 are hereby withdrawn:
  - Objection to Claims 7, 12 and 21;
  - Indefiniteness rejection to claims 13-14 under 35 U.S.C. §112, 2<sup>nd</sup> Paragraph.

## CLAIMS STATUS

3. Claims 24-27 have been added.
4. Claims 10-11 and 13-14 have been cancelled.
5. Claims 7, 12 and 21 have been amended.
6. Claims 1-9, 12 and 15-27 are pending and are examined on merits.

## Objection To Specification

7. The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR §1.75(d)(1) and MPEP § 608.01(o). Correction of the following is required:

The specification is objected to because it does not have support for the weight % for different components as claimed in Claims 1-9, 12 and 15-27.

The claimed invention is drawn to a "hydrogen peroxide neutralizing, gamma-sterilizable, or gamma sterilized nutrient medium" composition comprising casein soy peptone agar supplemented with sodium thioglycolate, sodium thiosulfate, sodium disulfite, sodium pyruvate, polyvinylpyrrolidone (i.e., PVP) in morpholinopropane sulfonic acid (i.e., MOPS) and phosphate buffer and said medium is further supplemented with one among asparagine, betaine, cystine, glycine or proline and one among bromocresol purple, bromocresol violet or bromothymol blue as pH indicators and a method to detect microorganisms in "hydrogen peroxide bearing air or on a hydrogen peroxide bearing surface".

From the record of the present written disclosure, the specification lacks the antecedence for concentration ranges claimed for each of the components claimed in Claims 1-9, 12 and 15-27 because the percent concentrations of different components constituting nutrient medium compositions with respect to the agar described in Tables 1 and 2 are not in the same range as those claimed in Claims 1-9, 12 and 15-27

8. In response to the objection to specification as currently presented being non-supportive for the claimed composition/method claimed in Claims 1-9, 12 and 15-27; in the response filed 23 July 2007, the statement is made that "these Tables do not set forth the quantities of components of the claimed compositions. The compositions utilized are reported in Examples 1 and 2 (Spec. pp .5-6)" and at other specific places in the specification "and originally filed Claim 2".

The composition in percent quantities is described only in Tables 1-2, and in Table 2 in addition to having medium composition colony counts for *S. aureus* are also described. In examples 1 and 2 merely the weight for each of the components of the culture medium is given. Since the composition given in Tables 1 and 2 is the effective concentration for the components, the specification lacks the antecedence for concentration ranges claimed for each of the components claimed in Claims 1-9, 12 and 15-27.

The arguments filed 23 July 2007 regarding the objection to specification in the Office Action mailed 23 March 2007 have been fully and carefully considered, but are not persuasive for the reasons:

- (i) discussed *supra*; and
- (ii) of record at pages 2-3, item 8 in the Office Action mailed 23 March 2007..

### **Objection To Claims**

9. In view of Amendments filed 23 July 2007, following is a new objection to Claim 25.

10. Word "a" at Line 4 renders Claim 25 unclear and vague because said word renders the claim grammatically incorrect. Appropriate correction is required.

### **Claim Rejections - 35 U.S.C. §112**

11. In view of Amendments filed 23 July 2007, following is a new rejection to Claims 24 and 26-27.

12. The following is a quotation of the appropriate paragraphs of 35 U.S.C. §112, second paragraph that form the basis for the rejections under this section made in this Office action:

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*The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter, which the applicant regards as his invention.*

13. Claims 24 and 26-27 are rejected under 35 U.S.C. §112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

- Claim 24 appears to be incomplete because from the opening sentence in preamble for said claim, it is not clear what the claim is about (e.g., a composition, method, kit or what?). Appropriate correction is required.
- Phrase, “comprising between 0.05 and 0.25% of sodium pyruvate with respect to agar” at Claim 26, Lines 2-3 renders said claims incomprehensible, unclear, vague and therefore, indefinite. This is because from the claim language as currently presented, it is not clear that said concentration of sodium pyruvate is on weight or volume basis with respect to the agar claimed in Claim 1. Appropriate correction/clarification is required.
- In Claim 26 at Lines 2-3, the limitation with respect to the concentration of sodium pyruvate lacks sufficient antecedent basis because Claim 26 depends from Claim 1, which does not recite that the medium composition claimed in Claim 1 comprises sodium pyruvate. Furthermore, from the preamble for Claim 26, it is not clear whether said limitation is in addition to all the limitations claimed in Claim 1. Appropriate correction is required.
- In Claim 27 at Lines 2-3, the limitation with respect to the concentration of sodium pyruvate lacks sufficient antecedent basis because Claim 27 depends from Claim 15, which does not recite that the medium composition claimed in Claim 15 comprises sodium pyruvate. Furthermore, from the preamble for Claim 27, it is not clear whether said limitation is in addition to all the limitations claimed in Claim 15. Appropriate correction is required.
- Phrase, “comprising between 0.05 and 0.25% of sodium pyruvate with respect to agar” at Claim 27, Lines 2-3 renders said claims incomprehensible, unclear, vague and therefore, indefinite. This is because from the claim language as currently presented, it is not clear that said concentration of sodium pyruvate is on weight or volume basis with respect to the agar claimed in Claim 15. Appropriate correction/clarification is required.

## CONCLUSION

14. THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).


A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

15. For the aforementioned reasons, claims 24 and 26-27 are rejected and Claims 1-9, 12 and 15-23 are allowed.


16. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Examiner Kailash C. Srivastava whose telephone number is (571) 272-0923. The examiner can normally be reached on Monday to Thursday from 7:30 A.M. to 6:00 P.M. (Eastern Standard or Daylight Savings Time).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Dr. Jon Weber can be reached at (571)-272-0925 Monday through Thursday 7:30 A.M. to 6:00 P.M. The fax phone number for the organization where this application or proceeding is assigned is (571)-273-8300.

Any inquiry of a general nature or relating to the status of this application or proceeding may be obtained from the Patent Application Information Retrieval (i.e., PAIR) system. Status information for the published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (i.e., EBC) at: (866)-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

  
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22 September 2007

  
DAVID M. NAFT  
PRIMARY EXAMINER  
ART UNIT 128/1457